

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

SELENA DUNSON,

Plaintiff,

:

Case No. 3:10-cv-441

-vs-

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

:

HOOVEN-DAYTON CORP,

Defendant.

---

---

**SUPPLEMENTAL REPORT AND RECOMMENDATIONS;  
ORDER REGARDING PROCESS**

---

---

This action is before the Court on Plaintiff's Objections (Doc. No. 5) to the Magistrate Judge's original Report and Recommendations (Doc. No. 4). The General Order of Reference for the Dayton location of court permits a magistrate judge to reconsider decisions or reports and recommendations when objections are filed.

The original Report recommended dismissing without prejudice Plaintiff's first claim for relief under Title VII because Plaintiff said nothing about a Right to Sue Notice. In response, Plaintiff has produced and attached to her Objections a copy of her Right to Sue Notice from the EEOC. Accordingly, the recommendation as to the first claim for relief is withdrawn.

The original Report recommended dismissing the third claim for intentional infliction of emotional distress under Ohio law because that claim comes within the Court's supplemental jurisdiction under 28 U.S.C. § 1367 and without the first claim, there would be no federal claim for the third claim to be appended to. This recommendation is also withdrawn.

The second claim for relief for negligent infliction of emotional distress under Ohio law is

still recommended to be dismissed with prejudice for the reasons given in the original Report: Ohio does not recognize such a claim for relief in the employment context.

Because the Complaint will now have claims over which this Court can exercise jurisdiction, the Clerk shall issue process when it is presented in properly prepared form by Plaintiff. Upon presentation of properly prepared Marshal 285 forms, the Clerk shall deliver them to the Marshal who shall make service thereof.

December 13, 2010.

s/ **Michael R. Merz**  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).